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In re Application of :
Christopher Duncan et al. :
Application No. 10/510,462 : DECISION ON PETITION
Filed: August 10, 2005 :
Attorney Docket No. 16933-3 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed October 29, 2008, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed, April 16, 2008, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on July 17, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a response to the Office action, (2) the petition fee of \$1620, and (3) a proper statement of unintentional delay.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1110 extension of time fee submitted with the petition on October 29, 2008 was subsequent to the maximum extendable period for reply, no extension of time is required. A refund will be issued in due time.


It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. *See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure*; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results

in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application.

Telephone inquiries concerning this decision should be directed to Shelley Clement at (571)272-6052 or in her absence to the undersigned at (571)272-7099.

This application is being referred to Technology Center AU 3727 for appropriate action by the Examiner in the normal course of business on the reply received



David Bucci
Petitions Examiner
Office of Petitions